

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1266 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

SHANTABEN D/O MULJI FAKIRA,

Versus

STATE OF GUJARAT

Appearance:

Shri A.J. Patel, Advocate, for the Petitioners

Shri T.H. Sompura, Assistant Government Pleader,
for the Respondent

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat on 27th February 1988 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in revision by implication by the order passed by and on behalf of the State Government (the Respondent herein) on 10th February 1993 is under challenge in this petition under Art. 226 of the

Constitution of India. By his impugned order, the concerned Competent Authority declared the holding of the petitioners to be in excess of the ceiling limit by 10715.98 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners including deceased petitioner No.1 had filed their joint declaration in the prescribed form under sec. 6(1) of the Act with respect to their undivided holding within the urban agglomeration of Surat. That form was duly processed by the Competent Authority at Surat. It appears that in the meantime deceased petitioner No.1 breathed her last. Her heirs however appeared before the Competent Authority at Surat in response to the draft statement issued under the relevant provisions contained in sec. 8 of the Act. By the order on 27th February 1988 under sec. 8(4) of the Act, the Competent Authority at Surat declared the holding of the petitioners to be in excess of the ceiling limit by 10715.98 square meters. Its copy is at Annexure B to this petition. It appears that the petitioners represented for effecting declaration of the surplus land from certain parcels of land rather than what was mentioned in the order at Annexure B to this petition. Thereupon the Competent Authority at Surat had passed one order on 28th February 1990 accordingly. Its copy is at Annexure C to this petition. It appears that the notification under sec. 10(1) of the Act came to be issued on 17th May 1990 with respect to the land declared surplus by the order at Annexure C to this petition. Its copy is at Annexure D to this petition. It was followed by the notification under sec. 10(3) of the Act on 20th September 1990. Its copy is at Annexure E to this petition. It was followed by the notice under sec. 10(5) of the Act issued on 23rd December 1991. Its copy is at Annexure F to this petition. It appears that the order at Annexure B to this petition as modified by the order at Annexure C to this petition came to the notice of the concerned officer of the State Government. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice thereupon came to be issued on 31st March 1992 calling upon the petitioners including deceased petitioner No.1 to show cause why the aforesaid orders at Annexures B and C to this petition should not be revised. Its copy is at Annexure G to this petition. The petitioners filed their reply thereto some time in December 1992. Its copy is at Annexure H to this petition. Thereafter, by the order passed by and on behalf of the State Government on 10th February 1993, the orders at Annexures B and C to this petition were

maintained. Its copy is at Annexure I to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the orders at Annexures B and C to this petition as impliedly affirmed in revision by the order at Annexure I to this petition.

3. It appears that in their reply at Annexure H to this petition the petitioners did point out to the author of the show-cause notice at Annexure G to this petition that the orders at Annexures B and C to this petition were not according to law. It cannot be gainsaid that the powers of revision under sec. 34 of the Act can be exercised suo motu against as well as in favour of the land-holders as the case may be. Even if the orders under revision appear to be erroneous and revision thereof would be for the benefit of the land-holders, the State Government cannot refuse to exercise its suo motu powers once the proceeding under sec. 34 of the Act is initiated. On showing good cause by land-holders for interference with the order passed by the Competent Authority in reply to the show-cause notice issued under sec. 34 of the Act, it would not be open to the State Government to close the proceeding by a non-speaking order by just observing that the order in question passed by the Competent Authority calls for no interference by the State Government in exercise of its revisional powers under sec. 34 of the Act. That is exactly what is done in this case.

4. The show-cause notice under sec. 34 of the Act was issued on 31st March 1992 at Annexure G to this petition. The petitioners replied thereto by their reply at Annexure H to this petition. Without considering the reply at Annexure H to this petition, by a non-speaking order passed by and on behalf of the State Government on 10th February 1993, the impugned orders at Annexures B and C to this petition have been impliedly affirmed. That cannot be permitted to be done.

5. Ordinarily, in view of my aforesaid discussion, I should remand the matter to the State Government for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. However, as rightly submitted by learned Advocate Shri Patel for the petitioners, the matter deserves to be remanded to the Competent Authority at Surat rather than to the State Government. The reason therefor is quite simple.

6. As rightly submitted by learned Advocate Shri Patel for the petitioners, the house property could not have been included in the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the impugned orders at Annexures B and C to this petition that one house property of the petitioners has been included in their holding. That has to be excluded from their holding.

7. Another grievance voiced by learned Advocate Shri Patel for the petitioners is that the benefit of the binding ruling of the Supreme Court in the case of Smt. Atia Mohamaddi Begum v. State of U.P. and others reported in AIR 1993 SC 2465 has not been given in the instant case. Learned Assistant Government Pleader Shri Sompura for the respondent has submitted that certain factual position for applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) will have to be ascertained. It will have to be found out whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence covering the area in question on the date of coming into force of the Act. It will have further to be ascertained what the situation of the land in question was therein if it was in existence and whether or not the lands were in fact subjected to agricultural operations on the date of coming into force of the Act. Answers to these questions will depend on investigation into certain facts on the basis of the material on record or the material that the parties may bring on record. This can better be done by the concerned Competent Authority rather than the State Government.

6. Besides, the contention before the State Government on behalf of the petitioners in reply to the show-cause notice was that the area of certain lands was reduced in view of implementation of one town planning scheme in the area. At Annexure A to this petition is one circular issued by and on behalf of the State Government on 10th June 1987 in that regard. The effect of that circular will have also to be considered if the area of certain lands is reduced on account of implementation of the town planning scheme in that area.

7. In view of my aforesaid discussion, I am of the opinion that the matter will have to be remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according

to law in the light of this judgment of mine. The impugned orders at Annexures B and C to this petition as impliedly affirmed in revision by the order at Annexure I to this petition will have therefore to be quashed and set aside.

8. It may be noted at this stage that the notifications under sec. 10(1) and 10(3) of the Act were issued practically in the name of the dead person. It is an admitted position on record that deceased petitioner No. 1 was no longer alive on the date of the orders at Annexures B and C to this petition and she would not naturally be alive on the date of issuance of the notifications at Annexures D and E to this petition. Those notifications will therefore be of no consequence. Even otherwise, when the orders at Annexures B and C to this petition were sought to be taken in revision under sec. 34 of the Act, consequential actions pursuant thereto would also be subject to revision.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Surat on 27th February 1988 at Annexure B to this petition as amended by the order passed by him on 28th February 1990 at Annexure C to this petition as impliedly affirmed in revision by the order passed by and on behalf of the State Government on 10th February 1993 at Annexure I to this petition together with the notifications at Annexures D and E to this petition are quashed and set aside. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
